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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92059235
Party	Plaintiff Nite Ize, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:	§	
	§	
Trademark Reg. No. 4179235	§	
	§	
Trademark: NITEYE	§	
	§	
Registered: July 24, 2012	§	
	§	
IC: 11	§	Cancellation No. 92059235
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NITE IZE, Inc.	§	
Petitioner	§	
	§	
v.	§	
	§	
ZHANGWEI MO	§	
Respondent	§	

**PETITIONER’S RULE 26(a)(3) PRETRIAL DISCLOSURES**

Pursuant to Rule 2.121(e) of the Trademark Rules of Practice and Rule 26(a)(3) of the Federal Rules of Civil Procedure, Petitioner Nite Ize, Inc., by counsel, provides the following pretrial disclosures. Petitioner reserves the right to supplement and/or amend these disclosures as may be appropriate and as allowed by the Trademark Rules of Practice and Federal Rules of Civil Procedure.

1. Petitioner may take testimony from the following individuals:

- a. Brena Isaac, Marketing Director for Nite Ize, Inc., c/o Robert Ziemian, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, 720-484-3713.

Subject Matter: Ms. Isaac may be called upon to testify on behalf of Petitioner as to the use of the NITE IZE trademark, the famous nature of the trademark, the confusion experienced among consumers, and the history of the NITE IZE trademark.

- b. Clinton Todd, General Counsel for Nite Ize, Inc., c/o Robert Ziemian, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, 720-484-3713.

Subject Matter: Mr. Todd may be called upon to testify on behalf of Petitioner as to the use of the NITE IZE trademark, more recent usage history of the NITE IZE trademark, and the enforcement history of the NITE IZE trademark.

- c. Michael C. Boyd, President for Nite Ize, Inc., c/o Robert Ziemian, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, 720-484-3713.  
Subject Matter: Mr. Boyd may be called upon to testify on behalf of Petitioner as to the use of the NITE IZE trademark, and more recent usage history of the NITE IZE trademark.

- d. Richard N. Case, CEO and Founder of Nite Ize, Inc., c/o Robert Ziemian, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, 720-484-3713.

Subject Matter: Mr. Case may be called upon to testify on behalf of Petitioner as to the history of the NITE IZE trademark, the famous nature of the trademark, the confusion experienced among consumers, and the enforcement history of the NITE IZE trademark.

- e. Carl A. Forest, prior attorney of record for Nite Ize, Inc., Squire Patton Boggs, LLP, 1801 California Street, Suite 4900, Denver, Colorado, 303-894-6114.

Subject Matter: Mr. Forest may be called upon to testify on behalf of Petitioner as to Nite Ize, Inc.'s intellectual property matters.

- f. Robert P. Ziemian, current attorney of record for Nite Ize, Inc., Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, 720-484-3713.

- g. Mr. Jerry Moore, President of Playhard, Inc., c/o Robert Ziemian, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, 720-484-3713.

Subject Matter: Mr. Moore may be called upon to testify on behalf of Nite Ize as to the use of the NITE IZE trademark, Nite Ize's claims of priority and likelihood of confusion, the famous nature of the trademark, the confusion experienced among consumers, and the history of the NITE IZE trademark.

2. The following types of documents may be introduced as exhibits during testimony:

- a. Documents relating to Trademark Reg. Nos. 1620077 and 2237945 for NITE IZE and documents relating to the selection and use of the mark, enforcement history of the mark, famous nature of the mark, and evidence concerning consumer confusion relating to the NITEYE trademark and the NITE IZE trademark.
- b. Documents relating to Trademark Reg. Nos. 2485515 and 2622179 for MAGLITE.
- c. Official records pertaining to Respondent's international trademark portfolio for the NITEYE trademark.
- d. Official records pertaining to Petitioner's international trademark portfolio for the NITE IZE trademark.

- e. Business documents and other evidence related to the use of the mark NITE IZE in association with flashlights, including, but not limited to press releases, sale records (including, number of products and estimated sales numbers), examples of Maglite® combo packs sold under the NITE IZE mark, examples and sales records of other lighting devices sold.
- f. Business documents, articles, and other evidence concerning the commercial impression of the NITE IZE mark.
- g. Documents related to the cancellation of the NITEYE mark in China, proceeding No. 10231619.
- h. Business records related to the sale of Nite Ize products, awards received, sales and advertising expenditures, and other evidence related to the famous nature of the NITE IZE mark.
- i. Requests for Admission and Answers to Requests for Admissions and Interrogatories and answers to Interrogatories from the present case.

Respectfully submitted,

Date: June 27, 2016

/Robert P. Ziemian/  
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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 27th day of June, 2016, the foregoing *Petitioner's Rule 26(a)(3) Pretrial Disclosures* was served on Respondent's counsel of record, via email to the following:

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/Robert P. Ziemian/  
Robert P. Ziemian

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